UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION ET AL.,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 10, 2008

2:36 PM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Order signed on 1/3/2008 Scheduling Hearing on Debtors' Expedited Motion to Permit Opportunity for Statutory Committee Members to Participate in Exit Financing Syndication.

HEARING re Motion to Authorize Expedited Motion to Permit Opportunity for Statutory Committee Members to Participate in Exit Financing Syndication.

HEARING re Notice of Hearing re Exit Financing Participation Motion.

HEARING re Objection to Debtors' Expedited Motion to Permit Opportunity for Statutory Committee Members to Participate in Exit Financing Syndication and Affirmation of Services, on behalf of United States Trustee.

HEARING re Order to Show Cause setting hearing re: Motion for order (1) extending deadline for submission of cure notices, (2) approving the cure notices executed by movants with respect to their claims, and (3) directing the debtors to reconcile.

HEARING re Motion for Order (1) extending deadline for submission of cure notices, (2) approving the cure notices executed by movants with respect to their claims, and (3) directing the debtors to reconcile cure claims with corresponding claim.

HEARING re Debtors response to Ad Hoc Trade Committee's motion for order (1) extending deadline for submission of cure notices, (2) approving the cure notices executed by movants with respect to their claims, and (3) directing the debtors to reconcile.

Transcribed by: Penina Wolicki

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P R O C E E D I N G S

THE COURT: Okay. First, I'm sorry we got started a little late today. It was a busy morning calendar, and there are some last minute things on the calendar today in connection with another case. So, in any event, Delphi Corporation.

MR. BUTLER: Your Honor, good afternoon. We're here for a non-omnibus agenda hearing. It's Jack Butler and Kay Marafioti and Tom Matz on behalf of -- from Skadden on behalf of the debtors, Delphi Corporation. We're here on two orders to show cause that have been entered -- scheduling today for a hearing on two different matters. The first is an order to show cause procured by the debtors dealing with the exit financing participation motion filed at docket number 11691. And the only -- there are no objections filed by any parties other than the U.S. -- United States Trustee, who has filed her objection separately, and Ms. Leonhard's here to argue that objection on behalf of the United States Trustee.

Your Honor, what we were seeking to do here, we thought, was relatively straightforward. And that is simply to say that at this point in the Chapter 11 cases, with our disclosure statement out, our solicitation period ending tomorrow, the exit financing arrangements having been approved by Your Honor on November 16th, so that that order has been entered and is final; and the -- and the financing having been launched by J.P. Morgan and by Citibank yesterday here in New

York, and today over in London, that we thought it was appropriate to ask the Court, as the debtors, for dispensation to permit any statutory committee member to participate in the exit financing syndication. I would underscore, that's not to lead the financing, it's not to be an arranger, it's not to have, if you will, book status, it's not to be a book runner or any of those things; but rather to, if it chose to, invest in the exit financing syndication.

You know, for example, Your Honor something more than twenty-five percent of our prepetition bonds are owned within holders of the statutory committees. And to the extent those folks or others want to invest, you know, essentially evaluate their investment and roll over their investment in the company going forward or invest in the bonds, they -- we believe -- as they invest in the exit financing, rather, we believe that they ought to be able to do so. The -- we don't believe that there was any -- we clearly believe there's no actual conflict, and we believe that there's no appearance of a conflict. And that's why we filed the motion. Because, Your Honor, my, you know, my schooling in bankruptcy over the years has been, you know, disclose, disclose, disclose, and lay things out, and find out whether people have concerns about them. And that can clearly address any suggestion that there is an appearance of a conflict. And therefore we believed filing a motion by the debtors in possession, after consultation with our statutory

committees, but filing it as the debtors, laying out and disclosing all of this for the world, seeing whether there are any objections from any parties in interest, and there are no objections from any claim holder or any interest holder in the cases; and then getting a very limited ruling from Yours -- from Your Honor, simply if you're inclined to do it, to simply authorized statutory committee members to participate in the exit financing if they so choose. We believed, as we balanced any potential appearances of conflict we could make a remedy by this motion against the potential prejudice of the estate of keeping potential investors out of the market place or requiring that they walk away from the committees at a time we're trying to conclude these cases, after having provided leadership over the last two and a half years, we believed was prejudicial to the estate, and not in the interest of our interest holders or creditors or the debtors in possession.

THE COURT: Who are the members of the creditors' committee presently?

MR. BUTLER: Could you help me on that, Mr. Rosenberg?

MR. ROSENBERG: Certainly.

MR. BUTLER: It has changed.

MR. ROSENBERG: It has, indeed. The present members, Your Honor, are Capital Research, which is the chair of the committee and the very substantial holder that Mr. Butler is

referring to. There is one union, the IUE. There is the indentured trustee for the senior bonds, Wilmington Trust. And there are three trade creditors.

THE COURT: When you made this motion, did you -- were there particular members that looked like they were going to trade in others, and others that you assume are not going to?

MR. ROSENBERG: I think, Your Honor, as far as --

THE COURT: Or not trade, but just be interested in --

MR. ROSENBERG: -- yes.

THE COURT: -- considering exit financing.

MR. ROSENBERG: As far as creditors' committee is concerned, the motion is really directed for Cap. Re., which is a major player in these sorts of transactions in a difficult financial market, and again, as the chair of the creditors' committee, it would -- to the extent they are willing to invest, it would be, you know, an important signal to the rest of the market place to let them do so. Mr. Butler, of course, and I don't mean to take over his argument if he's in the middle of it, he has focused on the lack of prejudice if the cases are over in a week or two. And of course, that's true. But if something goes wrong here and the cases are not over in a week or two, and in the meantime, you've had resignations, and let's, since we're being honest, focus upon the chair of

the committee, who's been so instrumental in getting us from here to there, in order to participate in the financing which is good for the estate, we would have a very difficult situation going forward and putting the pieces together, you know, without the most sophisticated members of the committee.

THE COURT: So it's your view that if I were to grant this motion, there'd be sufficient members of the committee other than Cap. Re. or other than those who are likely to participate in pursuing the exit financing, to vote on committee issues related to the exit financing?

MR. ROSENBERG: Oh, oh, absolutely, Your Honor. I would not anticipate -- I certainly wouldn't want to prejudge the issue. But the only -- there's only one committee member who is in the business of lending money, so --

THE COURT: Well, the indentured trustee wouldn't be doing it.

MR. ROSENBERG: Certainly not. And I don't believe the trade committee member -- the trade members would, so.

THE COURT: And the union -- it's an unusual thing for a union to do, right?

MR. ROSENBERG: I would certain -- if the union has that much cash, Your Honor, we might want to reconsider what we've done here.

THE COURT: Okay.

MR. ROSENBERG: But that's correct, Your Honor. We

would have five unconflicted, nonlending members to look at anything that was done here.

THE COURT: Now, there was no mention in the motion about any sort of screening device analogous to what you might do in the Federated type of order.

MR. ROSENBERG: Yeah, well --

THE COURT: And I don't know whether that's contemplated here or not. I mean, so I'm asking --

MR. ROSENBERG: -- it actually was contemplated, Your Honor, to the extent of screening Cap. Re.. And again, we're now focused on Cap. Re. Obviously the issue comes up on the equity committee as well.

THE COURT: Right, and I'll turn to that.

MR. ROSENBERG: That would have to be discussed. Screening Cap. Re. from any committee discussion of or vote upon the financing, which I think is what Your Honor is focusing on.

THE COURT: Well, no, it goes beyond that. I understand that point. And that's why I asked the question about other committee members being available to vote. But I guess I take it that it would be Cap. Re.'s desire that the person who serves on the committee would be involved in the credit analysis, and would know whether, in fact, Cap. Re. did participate or not.

MR. ROSENBERG: Yes. That's correct, Your Honor. Mr.

Mason is Cap. Re.'s personal counsel. He might address that further. But yes, we are not talking about screening off a committee representative from the Cap. Re. decision making.

THE COURT: Okay.

MR. ROSENBERG: That's not feasible.

THE COURT: All right.

MR. MASON: Just to speak to that point for a second, Your Honor. Richard Mason, Wachtell, Lipton, Rosen & Katz for Cap. Re. You may recall that early in these Chapter 11 cases, we made a submission to the U.S. Trustee and to Your Honor whereby we said that David Daigle, who is the Cap. Re. representative on the creditors' committee, would in effect, wall himself off. And he's been a very lonely person at Cap. Re. for the past two years. I would say that if Your Honor were inclined to grant the motion, and Cap. Re. were to move forward in considering placing an order, to use the financial term for the financing, it's probably not feasible for them to do that without at least talking to Mr. Daigle and getting his general impressions. He's a very careful person, so I suspect he would continue to be careful and certainly not expose committee level or committee sensitive information. I think as the debtor has said in its motion, and it's my sense as well and the Cap. Re. sense as well, that the material information for a credit-type decision at this point is really out in the public domain. And so I'm not concerned about that issue. But

he would -- we would, in effect, have to modify our submission, and frankly I'd do it --

THE COURT: And it would cover just this financing? The modification would cover just this --

MR. MASON: Right.

THE COURT: -- financing? It wouldn't cover any other activity that Cap. Re. might be doing?

MR. MASON: Yes. That is actually correct, Your Honor. So he would talk with his other internal people about this financing, and he'd have give him his impression of Delphi generally and of the general situation going forward, so that they can make an intelligent decision. And to reiterate what Mr. Rosenberg said, we would of course, continue on the committee, and would recuse ourselves from committee deliberations and decisions about the exit financing.

THE COURT: Okay. As far as the equity committee is concerned --

MS. TORRES: Your Honor?

THE COURT: I'm going to ask you the same types of questions. Is it contemplated that all of the members of the equity -- current members of the equity committee might participate in this financing if I granted the motion, or would there be members, who in all likelihood would not?

MS. TORRES: There would be members who in all likelihood would not.

THE COURT: More than one?

MS. TORRES: More than one.

THE COURT: Okay. And you would also contemplate that those who would be pursuing a consideration of participating in the financing, that they would not have any role in committee deliberations on the financing or related issues?

MS. TORRES: That's correct, Your Honor.

THE COURT: And, I guess similarly, is it your view that those who are on the equity committee that would be interested in considering the exit financing opportunity, would they be able to screen themselves off a la the Federated model, or would it be contemplated that they would be involved in the -- the actual representative on the committee would be involved in the credit decision.

MS. TORRES: Your Honor, the size of the entities who have representatives on the equity committee are a bit different than the size of Cap. Re., for example. So that -- there would probably be some involvement --

THE COURT: There would be involvement?

MS. TORRES: Yes. But I think --

THE COURT: In the credit decision?

MS. TORRES: -- to the extent that -- to the extent that that's necessary, every precaution would be taken to, as my colleague just said, to keep that to a minimum.

THE COURT: All right. I mean, there's no direct statement to this effect in the motion. But just as in orders where I approve Federated type screening devices, I would expect that if I were to grant this motion the order would say that nothing in this order relieves any member of the committee from its obligations under the securities laws. I mean, you still are bound by those laws, State, Federal, whatever. So this really just addresses --

MS. TORRES: Okay.

THE COURT: -- I'm now, I guess I'm going back to Mr. Butler, but this really just addresses concerns that the committee members and the debtor would have, and I guess also the arrangers might have regarding the potential conflict under the Bankruptcy Law, of committee members who might want to participate in the exit financing.

MR. BUTLER: Yes, Your Honor. I think also, the factor is from the debtor's perspective, while we didn't participate in those discussions, my understanding is that the United States Trustee's office was approached by some of the individual committee members, and after deliberation the trustee was -- the U.S. Trustee was not receptive to the approach. And from the debtor's perspective, the reason we brought this motion is for -- in order to provide, sort of, full transparency in the Chapter 11 process to this request, and to explain why it's in the best interests of the estate.

And while I'll address Ms. Leonhard's objections later on if I have that opportunity, the fact is, and I'll say it here on the record now, I think we have over two and a half years, this debtor and this (indiscernible) has demonstrated on both sides, a track record of working closely together and cooperating with each other, and we don't bring this motion lightly. And certainly, do not, by anything we said in this motion, and I hope the motion -- because the motion didn't even address the point, are we attempting to usurp in any way, the statutory authority of the U.S. Trustee.

Your Honor will rule whatever Your Honor rules today. But if Your Honor is to grant this motion, this motion doesn't preclude the United States Trustee from doing whatever she believes is required of her by statute. I would hope that if she goes through the normal balance purview that she does, that she would take comfort in this order and in the disclosure that's been made, and in the lack of objection from any party in the case, and of the facts that are unique here. Because this is very different than, for example, the Partis situation of the equity committee, which we can address later. So I just wanted, from the debtor's perspective, Your Honor, here in open Court to say that we have an enormous amount of respect for the Trustee and for her office, and this is -- nothing in this motion is -- nor the relief we're seeking, is intended to usurp her authority.

THE COURT: Okay. All right. Did you have anything more you wanted to say or --

MR. BUTLER: Actually, that's really basically the point, Your Honor.

THE COURT: Okay. All right. Let me hear from the U.S. Trustee.

MS. LEONHARD: Okay. Thank you, Your Honor. Good afternoon, Your Honor. Alicia Leonhard for the United States Trustee. I think I've -- what I've heard the debtor say today and in the motion is -- are two things. First of all, that there's a commercial exigency requiring these parties to be involved in the exit financing and stay on the committee; and two, that oh, the case is almost over. So it doesn't really matter, it's fine, we can let them do -- let them participate. But, Your Honor, there is -- there are no commercial exigency grounds that excuse a fiduciary from its duties, and timing is not an excuse either. So, for example, if you have a Chapter 7 trustee who's also a fiduciary, we would be appalled if the Chapter 7 trustee came in and said, well, Your Honor, no -- I was having trouble selling this property so I'm going to buy it. And the -- or saying, oh well, the case is almost over so it's okay if I buy up the last of the assets. It'll benefit creditors.

Now, and in fact, with the trustee, that's a, you know, it's a bankruptcy crime, but here we're not going there.

But I'm not casting -- we're not casting aspersions on any member of the committees. Because as far as our knowledge is, everybody has carried out their duties faithfully and honestly and to the best of their ability. But our view is that the roles are in direct conflict because there are -- there are just simply different interests being served. And second, it's just simply --

THE COURT: Well, let's focus on that for a second.

MS. LEONHARD: Yes.

THE COURT: And I think it's important to look at the specific facts. I would certainly agree with you in your trustee example, for example.

MS. LEONHARD: Um-hum.

THE COURT: But, I mean, there's a union on the committee. The debtor, in consultation with the committee and with a lot of input from the committee, sought to eject the union's collective bargaining agreement, and sought to negotiate in the context of that motion and in the context of its business plan. It wasn't negotiating a sale of the business, but it was negotiating a significant issue in the case, one of the two or three driving issues in the case.

MS. LEONHARD: Well --

THE COURT: I don't think the union was violating its fiduciary duty to stay on the committee, was it?

MS. LEONHARD: Well, I think the difference is, I

mean, granted, I understand that's -- that example. But here we have a transfer of property going on in this -- who these parties will be lending money and getting a security interest in return. I think it's a bit different --

THE COURT: But isn't it -- I mean, I guess that's where the timing comes in. And again, I understand your general point that simply a matter of exigency or if it's good for the case wouldn't relieve someone of their fiduciary duty. But it seems to me that either the exit financing is going to happen --

MS. LEONHARD: Um-hum.

THE COURT: -- in the context of a confirmed plan, which the committee, of course, is on record supporting, or it won't.

MS. LEONHARD: Um-hum.

THE COURT: If it happens, then there's very little left for the committee to do except sort of look over the debtor's shoulder on claims issues and fee applications. I guess until substantial consummation, they'd be looking at transactions out of the ordinary course. But I think the debtors have been very clear that if they get the exit financing, they intend to substantially consummate immediately.

MS. LEONHARD: Um-hum.

THE COURT: So in that situation, I'm having a hard time seeing where the committee member is so dramatically

opposed to the interest of unsecured creditors that it would not be able to fulfill it's fiduciary duties. In other words, it's different to me than the creditor in America West who participated in the DIP loan and rolled eighty-five percent of its -- proposed to roll eighty-five percent of its prepetition claim into an administrative priority claim and a secured claim. And obviously, it was a DIP loan, so that was early in the case.

MS. LEONHARD: Um-hum.

THE COURT: Turning to look at the other scenario that's the flip side or the -- the side that could happen, and I guess this is the reason why the committee members are not resigning from the committee, it's conceivable that either the plan would not be confirmed or the condition to consummation of raising the exit financing would not occur. At that point, how would they be conflicted? Because they wouldn't be -- they wouldn't be participating any more. It seems to me, it is, in this instance, a limited scope of issues that, at least as far as conflicts are concerned, we'll deal with information in a second, but as far as conflicts are concerned, it seems to me that they would recuse themselves from any deliberations over the exit financing that the committee would have. For example, if the debtor said, you know, we're holding out for a lower rate and to -- but what do you think, committee, should we? The people who would be in the exit financing would recuse

themselves from that deliberation. They'd leave the room and they wouldn't be part of that vote. So it just seems to me that this situation, when you look at the specific facts, the timing is significant.

I don't think it's just because the debtor assumes the case is going to be over with. Because if you assume the case is going to be over with, then they would resign because they'd have no more purpose for being on the committee, but --

MS. LEONHARD: I guess, Your Honor --

THE COURT: -- if in fact their role was to be one of an au -- you know, a full fledged committee member deliberating on anything, if the plan weren't confirmed or consummated, then it would seem to me that they'd go back to the status quo ante. They wouldn't be an exit financer then, because by definition, that's why the plan wasn't going forward. Now, I suppose there's potentially a scenario where they didn't -- they were responsible for not providing the exit financing and there might be a claim against them for that. Under those scenarios, I would assume they'd resign, you know. But that's a pretty -- that's a very hypothetical scenario, it seems to me, or a speculative one.

MS. LEONHARD: Well, I think the issue is, Your Honor, is can you really put conditions on fiduciary duties? And I'm not sure that you can.

THE COURT: Well, case law says you can.

MS. LEONHARD: I'm sorry?

THE COURT: The case law says you can. The case law says you look at it on a case by case basis in the -- in the Penn Dixie case, Judge Lifland and then the District Court said you look at it on a case by case basis. There it was argued by the debtor that the committee member wanted to acquire the debtor, that they had an agenda to acquire the debtor, and they had moved to have the committee be formed in the first place. And they were chair of the committee, and you know, they clearly had an agenda. I don't think Judge Lifland disputed that, but he said it was okay. There'd be enough ways to circumscribe them if and when their acquisition agenda became real.

MS. LEONHARD: Well, I think that, you know, it's a case by case basis, because it is -- I mean, you obviously have to look at the facts of the situation. Now, frankly, you know, we are at a bit of a disadvantage because we don't have all the facts. But I think -- our view simply is that our role is to preserve the integrity of the committee system, the committee structure, and it really sets a bad precedent for committee members to, you know, I mean, what do we say if it happened a month ago, would we have said it was okay? I just don't think you can put this kind of timing -- and I understand Your Honor's argument. But I think that the other issue too, that it's not -- it is not -- that is really still relevant, is the

appearance of impropriety issue. And you know, I think this case, we all know this is a very large case, very complex. It's been going on for two years. And it's under really incredible daily public scrutiny. And frankly, there are a lot of really unhappy people around, you know, the creditors who aren't getting what they want, which is always true in a bankruptcy case.

THE COURT: None of those people objected.

MS. LEONHARD: That's true, Your Honor. That's true. But you know, these -- but the U.S. Trustee, I don't think that that is really relevant. Because it's our role to be the arbiter and -- not the arbiter, but to be the watchdog of the committee system. And of course, you know, the creditors' committee which was -- or the equity committee, are going to support their members, I guess. You know, they're not going to come in and support us. But I don't think it's relevant, especially in this case to --

THE COURT: I don't --

MS. LEONHARD: -- only us --

THE COURT: -- I don't know about that. I mean, I think that the point that the case law makes and that Collier makes is that where there are conflicts on a committee, and you know, every committee is made up of claimants --

MS. LEONHARD: Um-hum.

THE COURT: -- and each claimant has their own issue.

But the case law says where there are conflicts on a committee, in the first instance, it's up for the committee to police itself.

MS. LEONHARD: I --

THE COURT: And I guess I haven't -- I need to get a better sense as to where it's laying down on that issue. I mean, I don't see that it is or they are, because it's both committees.

MS. LEONHARD: Um-hum.

THE COURT: Usually you hear about that from another committee member, and these committee members, at least a couple of them, have been not shy about speaking up. You know, Mr. Fox and the union's counsel, I think, would, you know, if they felt that -- I mean leaving aside committee counsel, but if they felt that someone was taking advantage of their position on the committee, contrary to unsecured creditors' interests, you know, it would be incumbent upon them to speak up.

MS. LEONHARD: Well, you know, and I -- I think one thing I will say about that is with respect to conflicts, conflicts -- I don't read conflicts in the case law as meaning a potential breach of duty -- fiduciary duty. It's more the conflicts among the debtor and the creditor. For example, your union example, where there's a, obviously a dispute, a ripe dispute that needs to be resolved. And that doesn't disqualify

somebody from being on a committee. But I think the -- you know, and -- but I think that the other issue that we really haven't addressed yet is the appearance of impropriety. And as I started earlier -- started to say earlier, this is a large case with a lot of people who are, you know -- no matter what happens, I think that if there's a dual role. There will be an impression -- perception that the committee member is enriching itself or is somehow not meeting its duties --

THE COURT: But how -- but let's explore that perception.

MS. LEONHARD: Okay.

THE COURT: Is there any reality to it?

MS. LEONHARD: Yes. I mean, reality so far -- yet, no, but there is reality to it where, you know, articles get put in the newspaper --

THE COURT: No, no --

MS. LEONHARD: -- that kind of thing.

THE COURT: -- I don't -- you can't stop what people write in the newspaper.

MS. LEONHARD: Right.

THE COURT: But is there literally any reality to that perception which is that if this motion were granted, a committee member that participated in the financing would be enriching itself at the expense of the unsecured creditors?

MS. LEONHARD: Well, I don't even think you -- you

know, and maybe you don't have to go even so far as enriching. It's simply you have to --

THE COURT: Well, or using its position on its -- on the committee at the expense of the unsecured creditors. Because that's really the -- that's really the conflict.

MS. LEONHARD: Um-hum.

THE COURT: That's the fiduciary duty. You cannot use your position on the committee to the detriment of the -- of your constituency, the unsecured creditors, or to your benefit.

MS. LEONHARD: Um-hum.

THE COURT: You cannot -- you can press your claim. The union can press its claim. Wilmington Trust can press its claim on behalf of the bond holders. But it can't use its position on the committee to press the claim. It can't manipulate that position to help itself. And in those type of disputes it stands on its own as a creditor.

MS. LEONHARD: Um-hum.

THE COURT: And I've thought through, I guess, what it is that's involved in participating in the exit financing, which anyone else can do. I mean, the debtors made no secret about it. You know, it would be happy to get anyone to participate in the exit financing.

MS. LEONHARD: Um-hum.

THE COURT: And in fact, right now, the committee

members are probably the only people that it's wrong for them to talk to about the exit financing. Any other creditor's entirely free to talk to J.P. Morgan or Citibank. So, I don't -- again, if they're not involved in the committee's deliberations with the debtor and within it's own purview about the terms of the exit financing, if it's screened off from all of that, how would it be using its position on the committee to?

MS. LEONHARD: Well, I think it's just the fact that the dual role exists, you know --

THE COURT: But it doesn't -- but it's not using that role. It's not -- it's precluded by being sent out of the room --

MS. LEONHARD: I understand that.

THE COURT: -- whenever the issue comes up from -- I mean, frankly, I actually think that the financial press and the national press and most law professors, and all law professors that people respect, actually look at the facts, and so, just, you know, if someone's going to spout off without thinking about the facts, that doesn't --

MS. LEONHARD: Well, I mean --

THE COURT: -- I think when people say the appearance of impropriety, you actually have to see impropriety appearing as opposed to just assuming someone's going to allege it.

MS. LEONHARD: Well, I think that, you know, as I

say, I mean, we're sort of, in a lot of ways, grasping here, because we don't have all the facts.

THE COURT: I appreciate that. This concept appeared, you probably remember this, it appeared at the last paragraph of the disclosure statement order. And I said, now, we've got to, you know, you have to flesh this out some more.

MS. LEONHARD: Um-hum.

THE COURT: It wasn't in this form. But the idea arose there. And I think it's right of the U.S. Trustee to analyze it and be aware of it. And I would do it even if you didn't do it, because I think it's -- the role of a committee is central to a case. But I guess, there's nothing that I have seen that suggests to me that this relief would lead a committee member to cross the line, particularly where, and we haven't talked about this, on the informational issues.

MS. LEONHARD: Um-hum.

THE COURT: The order provides that nothing in the order would relieve the committee members from the securities laws.

MS. LEONHARD: Right. Well, that --

THE COURT: Because I have a pretty good idea about what information is out there in the public, having just gone through the disclosure statement hearing and know that this is a public company anyway that files reports. And I have a pretty good idea, I guess, of what the committee knows at this

point. But I don't -- this isn't a hearing on what the committee knows.

MS. LEONHARD: Right.

THE COURT: So I think if the committee has material inside information then, obviously, someone who sits on the committee is running some risk in participating in an exit financing, depending on how that's structured.

MS. LEONHARD: Um-hum. Yeah, well, and that's, you know, I think we're really not inclined to -- the only time we're really inclined to approve a wall is to -- so that an agency like Cap. Re. can comply with its obligations under securities law. I mean, that's why Mr. Daigle was walled off and all that.

THE COURT: Well, see, they do that anyway. I mean, I look at it a little differently. I think that those types of orders are not to protect committee members from the securities laws, and in fact that's why I put the provision in it.

MS. LEONHARD: Um-hum.

THE COURT: Instead, it's to give them assurance that this action of trading in securities during the case is -- does not cause them to run afoul of their fiduciary duties. Assuming that they comply with the screening procedure. Now, here, what's been represented to me is that while the committee members would not be -- I'm sorry, why the committee members would be screened from the committee's decisions and decision

making process and analysis of the financing, and so therefore, they wouldn't know what the debtor and the committee was thinking about strategically as far as their negotiations with the arrangers and the leads. And so they wouldn't be a conduit to the arrangers and the leads in any way. There still would be some information, I guess, some role, that the committee member would have as far as, I guess, due diligence on the debtor. Then that's all that's contemplated, right Mr. Mason?

MR. MASON: Yes, Your Honor. The -- my understanding of my client, the way they work is that they don't make investment decisions individually, so their team would get together. And given that Mr. Daigle has been active in this matter for two plus years, they would want to know his impressions and views both generally and about the business plan going forward and so forth.

THE COURT: So, if something were put in the order to the effect that Daigle will not have access to -- not Daigle, but anyone participating or any institution participating in the financing pursuant to this order representative on the committee, would be able to discuss that financing with his or her institution only in respect of due diligence on the debtor as opposed to any information that the debtor or the committee would have as regard to the financing itself, that would be okay?

MR. MASON: So -- right. In other words, if there

were a view about the financing and possible, say interest rates the debtor would be prepared to pay, that sort of stuff that he may or may not have heard --

THE COURT: He wouldn't have access to that. And even if he somehow got access to it, he wouldn't talk about it.

MR. MASON: -- with other people.

THE COURT: Right.

MS. LEONHARD: Well, I think the last issue, and maybe Mr. Butler resolved this, is the fact that it appears to be an order constraining the U.S. Trustee from acting.

THE COURT: No, I don't view it that way.

MS. LEONHARD: Okay, well.

THE COURT: I don't view it that way.

MS. LEONHARD: You know --

THE COURT: I think -- I think if that were their relief that the debtor were seeking, a different analysis would apply, because you have a specific statute --

MS. LEONHARD: Right.

THE COURT: -- that talks about a specific standard for removing someone from a committee and for review of that. But I think, nevertheless, that this is a live judiciable issue, because you have committee members who clearly have fiduciary duties who are in doubt about -- or to put it differently, are being cautious along with the debtor, to make sure that what is being proposed, at least as far as the Court

is concerned, would be consistent with their fiduciary duties.

MS. LEONHARD: Um-hum.

THE COURT: And that -- I mean, I agree with Mr. Butler. I always say this, if you're ever in doubt in a bankruptcy case, whether it's whether you should seize and asset or sell and asset, without Bankruptcy Court approval, it's time to ask for Bankruptcy Court approval.

MS. LEONHARD: Well, you know, I --

THE COURT: On notice. And I think notice is important. I mean, I understand there are thousands of creditors here, and more shareholders. But many of those creditors are quite vocal and quite well heeled and certainly have their reasons, if they wanted to be difficult on a principle basis, to raise this issue, and they haven't.

MS. LEONHARD: Well --

THE COURT: I don't believe that this issue is particularly subject to extrapolation or analogy to other situations. I mean, I think it's very different, for example, than the America West case. I think it's -- I mean, you mentioned in your footnote, the Partis issue.

MS. LEONHARD: Um-hum.

THE COURT: That was a very different stage in the case. People who were literally negotiating a lot if they were going to wear that hat. And I think even -- even under the Penn Dixie case, they would have been conflicted. Although it

would have been a little closer call than America West. But I think they would have, you know, been conflicted and properly got off the committee, the equity committee. So I think that consistent with the case law and what Collier says, you look at these things based on the facts and unless you have an exactly analogous situation or a very closely analogous situation, the only precedent you can take away from it is how you analyze the facts as opposed to anything that can be pulled out from this fact pattern and applied to another one.

MS. LEONHARD: Well, I understand -- I mean, I do agree, it's fact specific. But I just don't think that, you know -- we just have a -- we disagree. So obviously -- but in any case, you know, I really have nothing further unless the Court has more questions. But we would -- I think that the harm to the -- our view is the harm to the committee structure and the perception is much, much greater than any harm there would be -- I mean, if you're going to use timing as an issue. Well, the case is almost over. And if even if it's a, you know, a month or not, the committees will have sufficient members to carry on the role.

THE COURT: Well, but you were talking the chair of the committee, who is very involved in the negotiations. I mean, if -- I mean, I guess, I don't know if this has been broached with you, but would the -- I mean, one approach would be to say that they get off, and if the financing didn't go

through, you'd reappoint them. But, you know, it seems like it's kind of -- if one were prepared to do that, then I think that kind of answers the question as to whether there's a real conflict or not.

MS. LEONHARD: Well, but I mean, if the financing doesn't go through, then I mean, I think, you know, don't we have -- we have a bigger problem in the case.

THE COURT: No, I think you have -- yeah, you'd need a committee. You'd need a chairman --

MS. LEONHARD: Right.

THE COURT: -- who's had two years of experience and has looked all these people in the eye and knows how to put it back together again. I mean, I think that's why they're not resigning is that they're actually aware of their fiduciary duties. They're not thinking selfishly, and they're saying, you know, I need to stay on the committee. You know, there's been a big investment in what I've done for all the unsecured creditors.

MS. LEONHARD: Well, I mean, but I guess also, it depends on, you know, I mean, obviously there's been -- there's talking going on between the parties now, negotiation already going on. Because the debtors aggressively -- so well, but I think --

THE COURT: But not -- but no, let me, on that point I want to make sure I understand that. I mean, what's been

represented to me by both Mr. Butler and Mr. Mason and Mr. Rosenberg, is that the committee members who would participate in the exit financing are not arrangers, not underwriters. They are literally people who say, I'll do it. I'll put in the money for that amount. And so, I want to know, are they already involved in negotiating the terms of the financing?

MR. BUTLER: Absolutely not --

MR. ROSENBERG: No, Your Honor.

MR. BUTLER: Your Honor, if I can just -- I'm sorry. I mean, Your Honor, the fact is that there's no one on the committee -- I mean the two points here that we thought were relevant was the fact, among others, but was that the financing, that actual valuation of the structure of the financing, the financing, the selection of the agents -- the way the financing's all put together, that's already been reviewed. It's been approved by the Court. There's a final order on that. And we're not coming back for any more Court review of that issue. We're not asking for any more committee review of that issue. We obviously keep --

THE COURT: There's some flexibility in that -- in those parameters.

MR. BUTLER: Except that the discretion has been given to the company, to the debtors in possession, to exercise their business judgment in closing consistent with the approval and authorization we've gotten. So for example, Your Honor --

THE COURT: Okay.

MR. BUTLER: -- you authorized at that hearing --

THE COURT: Let me go to the next step.

MR. BUTLER: Okay.

THE COURT: In exercising that discretion, I'm assuming the committee -- I'm sorry, I'm assuming the debtors will discuss and negotiate, if need be, with the arrangers.

MR. BUTLER: Yes, Your Honor.

THE COURT: But they're not going to be negotiating with the people on the committees who are able to participate in the financing?

MR. BUTLER: That's absolutely correct.

THE COURT: They'd be precluded from doing that.

MR. BUTLER: Right. And we negotiate -- that's absolutely correct. The -- no one on the committee is going to be at the table with the arrangers and the book runners in this deal. They're not -- that's not -- you know, that's what I was trying to say. There's no one on the committee, to put it in the parlance, there's no one on the committee that's going to be at lead table status for this deal.

THE COURT: Okay.

MR. BUTLER: The -- those folks have been selected and they're out doing their jobs and, you know, what we're trying to do is, because of the, you know, the very large investor -- the large investment represented by members of the

committee, that -- in the company already, we simply are trying to make sure that the estate's not prejudiced in this -- in this unique circumstance, as I think we've laid the facts down.

MR. MASON: Your Honor, just briefly, speaking for Cap. Re., what I would imagine would happen here is what would happen in the typical non-bankruptcy corporate finance context, which is that assuming Cap. Re. were interested in participating in the exit financing, it would place an order at the right time in the next few weeks with the agent or with the arranger, and would specify the amount in which it was interested in purchasing an which trunch of debt, and what it viewed the appropriate terms to be. So the interest rate, any financial covenants or other features. And the arranger would then discuss with the -- would negotiate with the debtor, and we'd either get a yes or a no or a maybe. And if it turns out that the proposal that we made or that Cap. Re. made was in the debtor's and arranger's view, uneconomic, there would be, you know, presumably money elsewhere. There's nothing greener about the money we have than the money (indiscernible) has, for example.

THE COURT: And again, I'm going back to a question I asked you earlier --

MR. MASON: Yes.

THE COURT: -- because I think this probably makes sense to put in the order. As far as the role of the

particular committee member who sits on the committee on behalf of Cap. Re. or, you know, the equity committee member, that person's role in advising Cap. Re. on its bid is limited to due diligence about the debtor. It's not going to be telling -- he's not or she's not going to be telling Cap. Re. anything about the debtor's strategy on DIP financing -- on exit financing?

MR. MASON: That's correct, Your Honor. So that, for example, a natural question from someone uninvolved would be well, how much do you think the debtor is prepared to pay in interest.

THE COURT: Right.

MR. MASON: That's a no-no.

THE COURT: So it's really just based -- it's historical due diligence on the debtor's business.

MR. MASON: They might ask Mr. Daigle, for example, what do you think an appropriate rate is for us to, you know, request, to put in our order. And I think that that's fine for him to answer. It should be. But certainly they should not be asking or he shouldn't be answering anything about the debtor's strategy.

THE COURT: Okay. All right.

MS. LEONHARD: Well, I can -- I can see I'm sort of the lonely voice and I'll stop here. But I would say that, you know, since Mr. Butler is not restraining the U.S. Trustee in

any way, when -- if this happens, if the Court enters the order, we presume there'll be full disclosure from all the parties --

THE COURT: That's part of the --

MS. LEONHARD: -- and at that time --

THE COURT: -- relief.

MS. LEONHARD: -- the U.S. Trustee will conduct her due diligence and determine how to handle the ongoing membership of these people in the committee. So --

THE COURT: Okay.

MS. LEONHARD: -- thank you, Your Honor.

THE COURT: I mean, I don't have any problem, for example, with you or one of your colleagues talking to the committee representative about what it is that he or she said to the institution.

MS. LEONHARD: Um-hum.

THE COURT: I think that would be entirely appropriate. And you know, I think that'd be a good thing to do.

MS. LEONHARD: Thank you, Your Honor.

THE COURT: Okay. All right. I have -- does anyone else have anything to say on this motion? All right. I have before me the debtor's motion to permit statutory committee members, that is members of the official creditors' committee and the official shareholders' committee, to participate on or

in the syndication of the proposed exit financing in connection with the debtor's proposed Chapter 11 plan. It's clear from the record of this hearing that the participation that is contemplated by this motion and by the order is limited to participation as or not as an arranger or an underwriter or a lead book maker, but one who would submit a bid in connection with the financing, and would communicate that bid to the arrangers. It is not contemplated that the committee members who would be covered by this order, would therefore be in any negotiations with the debtor directly in regard to exit financing. It's also clear from the record of this hearing that anyone participating in the exit financing process who would be on one of the official committees, would be screened off from the committee's access to information about that process and the committee's deliberations about that process, such as any deliberations about the debtor's strategy in connection with exit financing.

While the motion does not contemplate a complete screening procedure a la the Federated case and numerous orders entered in this district and elsewhere in connection with buying and selling claims during a Chapter 11 case, it is contemplated that the committee representatives' role, on behalf of his or her institution, would be limited to discussing historical or business due diligence and not permitted to include any discussion of the debtor's strategy

regarding exit financing.

The motion was unopposed except by the United States Trustee, which objected to the motion on the basis that the requested relief, which to be fair to the U.S. Trustee, was not as clearly spelled out in the motion as it has been developed on the record of this hearing, would result in a potentially disabling conflict for committee members that could come up in two ways: One, it could give rise to a potential conflict with the committee members' duty of loyalty. It also could result, according to the U.S. Trustee, in the inappropriate use of information that a committee member might have or receive. In addition, the U.S. Trustee has stated that the relief requested might create an appearance of impropriety on behalf of the committee members that the Court should take into account. And I should note, finally, that the record is clear that the purpose of the motion was intended to provide comfort to the debtor, the committee members, and to the arrangers, that indeed the committee members could, without violating their fiduciary duties, participate in the financing on the terms that I've described. That is, this motion, very clearly does not seek any sort of declaratory judgment as to whether the U.S. Trustee is within her rights or discretion in removing any committee member.

However, I think properly, the debtor wanted to air the issue with the creditor and shareholder body and with the

Court, since the extent and nature of the committee members' fiduciary duties, while clear as a general basis, is ultimately one that requires analysis of the particular facts at hand before one can get comfortable that the duties are not being breached or potentially breached in such as way that would make the action or the proposed action improper. So it made sense for the Court to be asked to consider the issue after notice and the opportunity to object.

It's clear from the case law and commentators that the Court -- I'm sorry, that committee members have fiduciary duties to the unsecured creditors, in the case of creditors' committees and to the shareholders in the case of equity committees. However, membership on a committee does not preclude members from pursuing their own interests, so long as this can be done without running afoul of their fiduciary duties. See for example, In re Schatz Federal Bearings Company 5 BR 543-548 (Bankruptcy S.D.N.Y. 1980); In re Barney's Inc., 197 BR 431 (Bankruptcy S.D.N.Y 1996); and In re Penn Dixie Industries Inc., 9 BR 936 (S.D.N.Y 1981). In that case the District Court, in affirming Bankruptcy Judge Lifland concluded, as have all of the other authorities that have considered the issue, as well as Collier, that the issue of whether a committee member adequately represents the interests of a class as a whole is one that "can only be resolved by reference to the facts of each particular case" (ibid. 940).

In some cases the fact-based analysis is rather easy. See, for example, In re America West Airlines, 142 BR 901 (Bankruptcy District of Arizona 1992), in which the Court concluded that a committee member who had entered into a DIP financing agreement with the debtor in which it lent 23 million dollars and in return received a priority secured claim on almost all of the assets of the debtor as well as a super priority administrative claim, and that would have rolled up all but fifteen percent of its unsecured claim into the secured debt, that is around 54 million dollars, had clearly transformed itself into a position where on any number of issues, it would be in conflict with the interests of the unsecured creditors.

However, here, as I noted at oral arguments, it appears to me that given the nature of the proposal and the timing of that proposal, that with the screening and limitations that I described at the beginning of my bench ruling, the committee members who would be permitted to participate in this opportunity would not have placed themselves in a position where they would, on most matters, be likely to act contrary to the interests of the unsecured creditors. As I said before, if the exit financing goes through, the committee's role will be extremely limited and unrelated to the exit financing which will have become an accomplished fact. If the exit financing doesn't go through,

the committee will have a major role. But those who would have participated in the exit financing, obviously would not have participated in it under that scenario, and therefore would not have transformed themselves. As I noted at oral argument, one can spin out other hypotheticals that might put them in a conflict position, but those hypotheticals, for example, the committee members failing to honor commitment on exit financing, I think are, at this point, entirely speculative, as were the hypotheticals in Barney's.

Consequently, as I said earlier, it seems to me that the committee members who want to participate in this financing are not resigning from the committee, not because they're seeking some undue advantage through their committee membership, but rather because they are continuing to exercise their fiduciary duties to stay on the committee, recognizing the very steep learning curve that they've gone through in respect to the debtor, and the need to protect their constituents in the down side scenario, where the plan, which each committee has recommended, is not consummated.

Because this is a fact-based inquiry, based on hornbook principles which I've enunciated, although committee members have these fiduciary duties, they're allowed to represent their own interests so long as either that interest doesn't taint their judgment generally or they don't take undue advantage of their committee position in supporting those

interests, and applies those principles to quite unusual facts, I don't believe that the trustee's concern about the precedential effect of my ruling is one that any subsequent judge would be worried about. In fact, as I've said, given different scenarios, different timing, and different -- or proposed lack of constraints as I've imposed here, very different relief would be granted. I would deny that type of motion. Similarly, it's not only permissible but proper for a U.S. Trustee to review how, in fact, the committee members would be participating in their institution's due diligence. And I'm sure the committee members would understand that role that the U.S. Trustee has to play as far as questioning them about what, in fact, they intend to say to their institution. So I believe that this motion is consistent with the two committees' fiduciary duties and the integrity of the role that those committees will play in the case. And consequently, with the qualifications and limitations that I've set forth on the record, I'll approve it.

MR. BUTLER: Thank you, Your Honor. Your Honor, the second matter on this non-omnibus hearing agenda is a order to show cause that was granted yesterday for a hearing today on the ad hoc trade committee's motion for order extending deadline for submission of cure notices, approving cure notices executed by movants with respect to their claims, and directing debtors to reconcile cure claims the corresponding claims and

to make cure claim distributions directly to the movants. That motion was filed at docket number 11803. The Court's show cause order was entered at docket 11809. And the debtors responded this morning by filing the debtor's response to the ad hoc trade committee's cure notice extension motion at docket number 11865.

MR. SHIFF: Your Honor, may I be heard?

THE COURT: Yes.

MR. SHIFF: For the record, Your Honor, it's Adam Shiff of Kasowitz, Benson, Torres & Friedman, here on behalf of Argo Partners, ASM Capital, Avenue Capital, Contrarian Capital, Hane Capital, Longacre Master Fund, and Sierra Liquidity Fund, each of whom, at least as of the time of the disclosure statement hearing or the current time, populate what's been described and I think has been described before the Court, as the ad hoc trade committee. Your Honor, first of all, we'd like to thank the Court for allowing us to be heard today, and signing an order to show cause yesterday allowing that to take place. Needless to say, we understand the exigencies the Court is under right now at this time, with confirmation rapidly approaching.

Just so we're clear, Your Honor, we are not here in any way to upset the plan confirmation process or the hearings that are seeking or that will take place before you next week. We're simply seeking what we believe is a very limited relief

with respect to one section of the solicitation order that was entered by the Court following the disclosure statement hearing, Your Honor, which -- relating to cure claims as Mr. Butler described the title of our motion. Your Honor, we believe that these issues that we've raised in the motion directly impact upon the reconciliation of our claims as well as an enforcement of the settlement reached with the debtors that was set forth on the record of the disclosure statement hearing.

Your Honor, as the Court is aware, and it's quoted in our papers as well as the debtor's reply that was filed this afternoon, as a means or as a settlement of various objections, we had asserted to the plan and disclosure statement, the debtors had agreed to use commercially reasonable efforts to reconcile, and if agreed, allowed claims. You can leave out the rest of the quotes that are cited. As the Court is also, I'm sure, aware, as on or about December 21, in accordance with the solicitation order, the debtors mailed out numerous notices. And in accordance with the solicitation order, they sent or had KCC, we believe, send to non-debtor parties to executory contracts, a what I will describe as a detailed notice of a cure claim amount. In addition to that, where debtors had multiple addresses, they sent that notice to one address and sent a form or copy or limited type of notice to other addresses with clear instructions that only the one

notice that was sent to the entity they designated as the main address could be returned. In addition, they sent, as we described it, a generic notice to our clients or other transferees of claims that are subject to this motion indicating that your contract or the claim that arises under your contract may be subject to a cure notice that was mailed to somebody else.

Your Honor, as soon as these notices went out, and I don't need to belabor the Court with the timeline that we set forth in our papers, I trust the Court has seen that, but as soon as that went out, we attempted to contact the debtors to seek to tie or match what our -- the proofs of claim that underlied our claims or the scheduled claims for that matter, and what we -- and what was sent to the various non-debtor parties to executory contracts. Your Honor, despite repeated efforts, we were un -- and despite the representation to the Court and the agreement that was set forth for the Court, we were not given the information necessary to reconcile such claims.

THE COURT: Let me stop you. These are executory contracts, so do the claims that you've been assigned, or the proofs of claim, are they protected proofs of claim on the assumption that the contract will be rejected? What types of claims are these?

MR. SHIFF: In most instances, Your Honor, since

these are filed, certainly if they're scheduled amounts, certainly it's what the debtor believed what was owing as of the petition date.

THE COURT: Okay.

MR. SHIFF: And in, I believe, certainly most cases, I can't represent all cases -- I haven't looked through all claims, we can talk about numbers in a minute, these are generally proofs of claims for amounts owing as of petition date, not rejection damage claims. So these are the very claims that --

THE COURT: But you don't -- do you have an assignment of the contract?

MR. SHIFF: Of the underlying contract itself, no, Your Honor. Simply, the -- call it the account receivable, if that's an acceptable term. As well as in many cases various, and they vary by creditor and the like, various powers of attorney and other --

THE COURT: Well, that was going to be my next question. Do you have the power to direct the contract party in respect of its prepetition claim? For example, do you have the ability, by contract, as part of the purchase of their prepetition claim, to control how they settle that claim?

MR. SHIFF: In -- Your Honor, we represent seven different parties, each of whom have different forms and each of which sometimes gets negotiated out slightly differently

when they're dealing with a creditor. But as a general matter, it's my understanding that we do have, at least most instances. I don't want to misrepresent to the Court. But at least in most of those instances, we do have that right. Some have specific powers of attorney, others just give us rights with respect to disposition of the claim.

THE COURT: So why can't you just send those people a notice and say we direct you to elect treatment X or elect treatment Y when you get this notice.

MR. SHIFF: Well, Your Honor, that's been -- that's been part of the problem. In the first instance, these notices having been mailed out on December 21, the Friday before Christmas, arriving whatever days they arrive, I'm not going to try to speculate how long the mail takes, so you know, so one issue has been actually reaching all these people. The second issue is that it's not crystal clear, because we didn't have the reconciliation information, that if we have a number of contracts with party X and the debtor is seeking to cure, so to speak, a number of purchase orders or certain other contracts with that party, we did not have the information to necessarily call up that person and say okay, you need -- or at least do it in the time frame that was required, which was now today, essentially, because things -- ballots or election forms are due Friday -- you know, tomorrow in California.

We have, as we described in our motion, with the

information we have been able to obtain, have started that process. But the problems were compounded, because in certain instances, the creditors, and I don't want to speculate as to why, but maybe because they knew they had sold this claim, didn't have the notice. Maybe they threw it away, or as we described earlier, in the case of the multiple address entities --

THE COURT: But isn't that -- I mean, if they've agreed with you to take your direction -- with your clients, to take your direction, that's -- they've screwed up, right?

MR. SHIFF: They would have screwed up -- in some cases they may have done it before we got to them. Because, as I described, it took -- there was some lag time there. In other cases, there are entities, and one happened that I know of --

THE COURT: How many contract parties are we talking about here?

MR. SHIFF: I don't have the exact number. I know the total amount of claims that we're talking about is approx -- total of what we believe are cure claims we own, is approximately 40 million. We believe --

THE COURT: No, no. I'm not -- not dollar amount. I'm talking about number of parties that you could write a letter to or fax or send an e-mail to.

MR. SHIFF: I believe it's approximate -- Your Honor,

that's consistent, I know. I'm just trying to do some math in my head, having spoken to number of people. In a few instances, I know of three members who had approximately fifty, who I think --

THE COURT: Each or together?

MR. SHIFF: -- fifty each. So they were the larger ones, let's say. So maybe in total you're talking, I think those are smaller 200 to maybe 250 or some number like that.

THE COURT: Are those different claimants or different contracts?

MR. SHIFF: Those would be -- I don't -- I'm not sure of that, Your Honor.

THE COURT: But let's assume that they're literally different people, don't your clients have a record of whose claims they bought?

MR. SHIFF: They certainly do.

THE COURT: So why can't they send them an e-mail or a fax or whatever, that says we bought your account receivable X in connection with -- well, do -- let's just say that. We bought your account receivable X. You've got this -- you may have received a notice from the debtor about the assumption of this -- of a contract to which this account receivable relates. If you did, we direct you to elect -- I don't know what your clients want to elect, cash or stock --

MR. SHIFF: Two points. One is the cash versus

stock, the other is the amount. But let's just say elect cash to make it easy --

THE COURT: Okay.

MR. SHIFF: -- for these purposes.

THE COURT: All right.

MR. SHIFF: Because the default is stock.

THE COURT: All right. So what's to stop you from doing that?

MR. SHIFF: No. Your Honor, nothing has stopped us. And I think we have -- and I don't have it based on number of creditors, but I know on dollar amount of the approximately forty million or so, we have obtained, at least what believe, and I know people will review them and may say differently, but we believe we've obtained already doing that, thirty-two of -- I'm sorry, twenty-two million of the forty, and there's approximately eighteen million that we have not been able to accomplish that yet, and --

THE COURT: Well --

MR. SHIFF: -- there's a few reasons.

THE COURT: -- when you say accomplish that. Let me -- maybe you were going to tell me in a second, but when you say accomplish that, you mean get something back from them acknowledging that they've received your instruction?

MR. SHIFF: No, no. Where they have told us or in many cases copied us on the form that they filled out in

accordance with what we --

THE COURT: But that's just -- that's just to give you reassurance. As far as putting them on notice of what you want, what's precluding you from doing that --

MR. SHIFF: No, no. We have --

THE COURT: -- as far as -- you've done that?

MR. SHIFF: -- we have Your Honor. We have --

THE COURT: Okay.

MR. SHIFF: -- whenever -- and there are probably a few due to the, what I'll describe as the reconciliation problem, which is matching a purchase order to an invoice. But with respect to certainly the vast majority, we have done that. The problem has become that either they don't have the forms in some cases for -- either because they threw them out, or because in the case of I know one is Toyota, that I'd heard about earlier, the apparent -- the original notice went to someplace in Michigan, I guess where the part was delivered from, as opposed to the corporate office, which I think is actually foreign. And when we contacted the people we had dealt with, they could not get their hands on the original. And we sub --

THE COURT: Well, why can't you --

MR. SHIFF: -- subsequently contact KCC --

THE COURT: -- why, in your notice to these people, can't you, you know, in addition to referring to the form,

attach a copy of it?

MR. SHIFF: Well, Your Honor, that's one of the problems. What the form does say, and that's one of the problems with the relief we would like, is what the form does say, at least, is you must file this -- it doesn't say it in the order, it says it on the form, that you must file the original. So much so that if you request a replacement ballot somehow, and we can talk about the difficulty we've had doing that, the originals are deemed no good. So one of the things we had suggested in our motion, akin almost to a proof of claim, that if you don't have the form you get from the debtor, you fill out something that conforms with Official Form 10, that would be one -- that would be one item --

THE COURT: Right.

MR. SHIFF: -- that would be helpful.

THE COURT: And then -- but separate and apart from whether you want to elect cash or stock -- elect cash, excuse me, I guess the issue I have is, as between your clients and your assignors, who are not assignors of the contract but of the claim --

MR. SHIFF: Simply of the claim, Your Honor.

THE COURT: -- and the debtor, why should the debtor get involved between you and your assignor with regard to the cure amount?

MR. SHIFF: Your Honor, I don't think what we're

asking for is for the debtor to get involved. I think what we're actually asking for the debtor is not to be involved in that. So to say that if we did file -- let's assume on behalf of someone we had a power of attorney. We go ahead and we file a form and check whatever it is we want to check. That that form not be thrown out the door. If somebody wants to come in and then challenge that form or our transfer, almost like a regular 3001, if someone's going to challenge that, that's fine. But what the procedures as they're being described, and I actually thing there's some ambiguity in the order we can discuss, but what this is essentially saying is don't waste your time, creditor, don't bother mailing in any form. And even if you wanted to mail something in you couldn't because you don't have a copy of the original and we don't accept anything else. So --

THE COURT: Well, no. You should go through that some more. That doesn't sound -- they're getting a notice that says we're going to assume your contract. We think the cure claim is X.

MR. SHIFF: Correct.

THE COURT: If you disagree, send back --

MR. SHIFF: The form.

THE COURT: -- the form with the cure claim on it.

MR. SHIFF: Right, and they --

THE COURT: We've already talked about the

election --

MR. SHIFF: Okay.

THE COURT: -- so that, I don't see why you can't just instruct them on what to do on that.

MR. SHIFF: Because logistically -- we can, but the logistics, because of the timing, whether it's the holidays, whether it's because we didn't have some of the information --

THE COURT: But --

MR. SHIFF: -- from the debtor, we haven't been able to get it done. And on that front, we're asking for a few days to finish getting this, what we'll describe the eighteen million, as I described.

THE COURT: -- but you sent out the notices -- when you say get it done, what you haven't done, necessari -- you've done all you can do. You sent out the notices to all these people saying how you want them to elect, right?

MR. SHIFF: We've sent them out, certainly to most. As I said, there are some, I think, we've had difficulty identifying from the information we have. But in most, we've sent them out.

THE COURT: But why don't -- I mean, I'm assuming you sent them out to everyone who had an executory contract that you had an assignment that related to that contract?

MR. SHIFF: We sent out as many as we could identify, Your Honor. I can't -- I just don't know exactly who sent out

what.

THE COURT: But when you say identify, your clients have a list of all their assignors?

MR. SHIFF: Correct.

THE COURT: I don't know why you wouldn't send it out to every one of them.

MR. SHIFF: We -- Your Honor, we first got that list, I believe, was it January 4.

THE COURT: No, your clients entered into transactions with these people.

MR. SHIFF: No, but the list is then getting cured.

THE COURT: Unless they threw away their -- I mean, they have their records, right?

THE COURT: They have their -- right. We could send it out to every creditor we bought a claim from, or every creditor that looks like it might be a contract. And they may have done that. I can't tell you what each of these seven have done, but I know the result has been --

THE COURT: They should have.

MR. SHIFF: -- okay.

THE COURT: Shouldn't they? I mean, if they had the power of attorney to direct them what to do, I would assume that's how they would exercise it --

MR. SHIFF: And I think in most --

THE COURT: -- by telling them what to do.

MR. SHIFF: -- and I'm just trying to be very careful because we do have, as I said, seven clients, with many of these.

THE COURT: Right.

MR. SHIFF: I think in most instances, at least, that is what they have followed.

THE COURT: Okay.

MR. SHIFF: The result of which has been, we believe we've gotten our hands on -- and we're still talking to some of them. I'm sure a lot will come in in the last minute, we've got our hands on fifty-three percent or so.

THE COURT: And if one or two of those don't submit it in time, isn't that a matter between you and them?

MR. SHIFF: Your Honor, certainly we will -- if something goes wrong here, certainly we will have whatever rights we have against them. There's no doubt about that. But what we're talking about -- I think what we're talking about doing here doesn't get -- doesn't get in anyone else's way. It's a couple more days --

THE COURT: Well, it could, though --

MR. SHIFF: -- to accomplish --

THE COURT: -- because aren't you asking for an order that says that the debtors should accept your election on any contract that you elect?

MR. SHIFF: Your Honor, it would certainly be our

preferred form of relief. However, we would --

THE COURT: But how do I know that you're entitled to make that election? We don't have any information ultimately --

MR. SHIFF: Correct. But what we could do, Your Honor --

THE COURT: -- about what rights you have vis a vis --

MR. SHIFF: -- but what we could do, Your Honor --

THE COURT: -- each of your assignors.

MR. SHIFF: -- is, to the extent we do make such an election, and we get it in now by the date, whatever the right date is, and then someone later, the debtor, whoever, has a problem with that, or someone wants to prove that, whether that's before this Court or somewhere else, at least we haven't been prejudiced by having it prejudged that there is no way we can do it.

THE COURT: So you're talking about a provisional election?

MR. SHIFF: I would be -- that, at least, would give us some comfort that our rights, at least, to -- will not have been impaired because we couldn't reach the person or whatever happened.

THE COURT: But again, I mean, rights against whom?

MR. SHIFF: It would be our right to claim -- it

would be both our right to say that the -- our election is valid -- let's say cash. Let's make it easier.

THE COURT: No, but again, your rights really are through your assignors, aren't they?

MR. SHIFF: Our rights are through our assignors? Well, certainly -- that's who we acquired them from, certainly, yes.

THE COURT: Well, I mean, what you're saying, what you're trying to protect is your rights being impaired, but what rights are those? Are those rights vis a vis the debtor or are those rights vis a vis the assignors?

MR. SHIFF: It's the right to receive this cure payment.

THE COURT: And where does that come through?

MR. SHIFF: The right to receive the cure payment comes through the original transferor, if that's what the Court's getting at.

THE COURT: Okay.

MR. SHIFF: But the problem --

THE COURT: Again, that's why I --

MR. SHIFF: -- becomes, however, if all this stuff goes out the door and these -- our election forms, as I'll describe them, are ignored or, you know we can't mail them in, or whatever it is, right. And then if everything gets given out to these various multiple address entities, we then never

had the right to either prove up that we did have the right to make the election, and then are left in the very difficult position of trying to chase people down for cash --

THE COURT: But why can't you prove -- I don't understand why you couldn't prove that up, as against your contract party.

MR. SHIFF: We might be able to ultimately prove that up. Yeah, we will be able to prove that up, right? We'll have to go sue them for not having followed our election --

THE COURT: Right.

MR. SHIFF: -- and then we're running around chasing whatever number of entities --

THE COURT: But maybe that's how it should be.

MR. SHIFF: -- there are.

THE COURT: Why shouldn't it be that way?

MR. SHIFF: It shouldn't be that way, Your Honor, because I think consistent with the way the bankruptcy transfer rules work, when you put on notice that you are the party to receive various, you know, consideration and treatment on a claim, that that is actually presumptively, assuming nobody objections, is presumptively valid. And we're not asking the Court to necessarily give us that alt -- if that was even put into almost an escrow account, or something, that we're not left trying to chase our tails to get it. And maybe more importantly than the money, the election, once made, I mean, is

irrevocable. Either they'll get stock or they'll get cash. And, you know, rather than simply being stuck with that, since our rights are -- we at least believe our rights, what they are. I know, it could be subject to some dispute. We have valid 3001s on file. That those rights just be honored, and at least protectively by not ignoring our forms and letting everything out the door. Because we would --

THE COURT: But aren't we talking --

MR. SHIFF: -- lose the right to elect -- I'm sorry.

THE COURT: -- we're talking about cure claims here now, right?

MR. SHIFF: Correct, Your Honor. Which, I mean, the cure claim, and I know the debtor has some stuff on this which I saw in their reply, I mean part of the cure claim is the payment of the prepetition account receivable. That's the very number we're talking about, and we were supposed to have assistance reconciling. And that's the very amount we assert --

THE COURT: But haven't you all gone through your claims?

MR. SHIFF: We are part of the way through. I mean, there's certainly been a lot of progress made. I know the debtor cited to some numbers.

THE COURT: Well, but if -- I mean, that's what they committed to do, is to go through all the prepetition claims.

If those are gone through and reconciled --

MR. SHIFF: Right. But Your Honor, for example, let's assume we're talking about reconciling claim X for fifty dollars, and we're talking back and forth. Then they send a cure notice out to party Y that says, all right, your cure now is, I don't know, ten dollars, let's say, which we don't get, we don't see --

THE COURT: Was there a --

MR. SHIFF: -- then the reconciliation --

THE COURT: -- I'm sorry, was there a deadline on the reconciliation effort?

MR. SHIFF: No, I believe it was a best -- what was it?

MR. BUTLER: Commercially reasonable efforts.

MR. SHIFF: Commercially reasonable efforts.

MR. BUTLER: By the confirmation date. And things would only be allowed if the debtors agreed. There was no agreement to allow a single claim.

MR. SHIFF: That's correct, Your Honor. I think the only deadline was on us to get them an initial list of claims a few days after the disclosure statement hearing, which we did. But, we're simply, because of where we stand right now, we know there are forms out there. We know we have -- at least believe, we have the right --

THE COURT: But if you're going through this

reconciliation process --

MR. SHIFF: Correct.

THE COURT: -- you must have a list of your assignors.

MR. SHIFF: Correct.

THE COURT: And a list of the prepetition accounts receivable.

MR. SHIFF: Correct.

THE COURT: Which you're pretty far along in deciding what that amount should be.

MR. SHIFF: In most cases.

THE COURT: You could certainly instruct them in good faith what you think it should be. You can instruct the assignors what you think it should be, right?

MR. SHIFF: You Honor --

THE COURT: So why can't you send them all, just as you would an election notice, why can't you say this is a reminder that, you know, whatever day, July 15, 2007, you assigned us account receivable X. You may have received, in December, an assumption notice from the debtors that requires you to do two things. One, if you wish to have a cash distribution, make an election. Two, decide whether the cure amount is right or not. This is to advise you that we instruct you to make the cash election, and we instruct you that our belief as to the cure amount is whatever it is, fifty dollars.

Under our agreement with you, you have an obligation, you've given us a power of attorney, whatever the language is, to take our instructions, fill out the notice and send it back.

MR. SHIFF: Your Honor, we have done what we could do exactly like that, literally over the past week, because that's really when the number started to come in.

THE COURT: Okay.

MR. SHIFF: And sitting here today --

THE COURT: But why -- as far as the numbers --

MR. SHIFF: -- we really can't do anything else --

THE COURT: -- but wait. But you already had the numbers. Why couldn't you just send that out before that?

MR. SHIFF: We didn't know -- we didn't have lists of -- we first received lists --

THE COURT: But you had lists of people. You had the assignors. And you had the claim.

MR. SHIFF: Right. But we didn't have the numbers, Your Honor.

THE COURT: What numbers?

MR. SHIFF: Because you have --

THE COURT: The numbers of what? I'm sorry.

MR. SHIFF: In other words, the claim -- a claim with a certain party, you know, company X's 1,000 dollar claim, could be comprised of different -- or is in most instances comprised of different purchase orders or subsets, some of

which are being -- as we've now seen what's being assumed, some of which are being assumed, some aren't. So you need, literally, to have all that information and then go back and say, okay, they've taken out three of the ten pieces. Okay, for that don't settle for less than 300 dollars.

THE COURT: Okay.

MR. SHIFF: That's what we haven't been able to do.

THE COURT: All right.

MR. SHIFF: But, Your Honor, certainly -- listen.

THE COURT: I understand.

MR. SHIFF: We've done what we could do.

THE COURT: Your assignments were in bulk from individual creditors as opposed to by particular contract.

MR. SHIFF: Certainly, at least, in most instances, yes. Your Honor, certainly, we have done -- and these are people, obviously, who are in this business and they've -- this is not the first case, you know, where they've had trade claims. They've gone out and they've done what they can. There is -- even if we can come up with some other, maybe, ways they should have phrased their e-mails, sitting here today with the deadline tomorrow in California, they certainly cannot do much else. I mean, they are working the phones right now. They are having, as I said -- started to say earlier, seeking to get replacement ballots out of the claims agent. And there has been a delay. And not to aspire any intention to that

other than they're very busy, maybe with ballots and notices and all kinds of notices. And as to getting those ballots, a) so they -- or at least having a couple days to get those duplicate or original election forms to be executed, either by them at least as a protective matter, or by the original transferor as we, you know, continue to try to work them; we don't see any real prejudice to the debtors. Now, I know --

THE COURT: I -- one point I'm confused about, which is, as far as the relief you're seeking is concerned, what sort of provisional instructions would you give the debtor if you don't know the cure amounts?

MR. SHIFF: Well, Your Honor, I think it would be -- the way, I mean, the way the system is set up, the very system that's in place right now, let's just take the good old classic example. Regular executory contract party gets a notice, never transferred his claim. He says, you know, he thinks it's twenty dollars, I mean, you know, he thinks it's twenty dollars, the debtor thinks it's ten dollars. And now the plan --

THE COURT: But he knows what he thinks. He's going to say twenty dollars.

MR. SHIFF: I may have misspoke. There's a dispute between the debtor and the non-debtor contract party as to the amounts.

THE COURT: Right.

MR. SHIFF: The procedures have a process by which that person's supposed to file an objection post effective date.

THE COURT: Right.

MR. SHIFF: It gets reconciled. And then ultimately after a final order, amounts that are reserved on behalf of that claim get paid. So what we're suggesting is this should just be treated no differently.

THE COURT: But do you put in? What would your clients put in, in their cure -- in their cure notice? They don't know.

MR. SHIFF: In some cases we don't know.

THE COURT: So how could they put it in?

MR. SHIFF: What we'd like to get -- we'd like to use those three days that we're talking about or five days, to get the additional information. And it's one of the problems of relief we do seek to get that additional information from the debtors.

THE COURT: But don't --

MR. SHIFF: Or there may be cases where --

THE COURT: -- but don't --

MR. SHIFF: -- we use -- sorry.

THE COURT: -- the customers -- don't the trade creditors know what they're owed? I mean, why wouldn't they put in exactly what they sold to you?

MR. SHIFF: They might. They might not. But --

THE COURT: But why wouldn't they?

MR. SHIFF: But they might have thrown it away, in may cases.

THE COURT: Well, that -- but -- the throwing away, you know, to me that's their look out. I mean, they should know better than that. I mean, why would they -- I mean --

MR. SHIFF: I mean, there's just no way to --

THE COURT: -- they know they entered into a transaction with you. They know that the cure is going to be paid a hundred cents on the dollar if it's assumed. To just throw it away and, you know -- that's, you know --

MR. SHIFF: Your Honor, I'm using the word probably thrown away, a little too loosely or colloquially. However, in the case of example where the original form is in Detroit and the entities and we entered into the deal with are in Japan --

THE COURT: All right. No, I understand your point about the original form. And I'm going to talk to Mr. Butler about that. But as far as not relying upon your contract party to put in the same amount that they sold to you, I think that's pretty paranoid, isn't it? I mean, they sold an account receivable to, you know, Contrarian or whoever. They probably made some representation --

MR. SHIFF: Certainly.

THE COURT: -- in the agreement, that that's what

they were owed. And then when the debtor sends them a notice to say what are you owed, for them not to put it in is pretty farfetched.

MR. SHIFF: Your Honor --

THE COURT: Why should the debtor have to recreate what they're owed. They know it. They sold it to you. They made a representation to you. You paid them a certain percentage on the dollar for that very account receivable.

MR. SHIFF: Correct, Your Honor. And, but, the facts are, and I'm -- I don't want to be accused of testifying from the podium or anything, the facts are, we have reached out to people, and there are times when either, again, the throw -- what I'm using as the throw away, but they haven't done it or they haven't bothered to do it, or it's missing, or what have you. And I know, we'll discuss replacement ballots subsequently.

THE COURT: But, you know, if you haven't done it, they -- I mean, I think that's kind of a risk that you take when you deal with these people.

MR. SHIFF: Well, Your Honor, that may be. But we also think there is a -- at least on this piece of it, there is a fix that does reduce that risk and protects people's rights and does not --

THE COURT: And what is that fix?

MR. SHIFF: We think the fix is a combination of

items, is a few more days to get this done, because we have not been able -- and I say get this done, get -- well we'll come back to who execute -- but get executed forms with the proper amounts into KCC's hands. So that would be one item. The --

THE COURT: Well, let me stop you there. Why wouldn't it be better to see what actually happens by the deadline. And then people can make a motion under Rule 60 if in fact, you know, if that's warranted. So that the person who's been negligent isn't rewarded, but the person who has a valid basis for being able to change their ballot has the right to come back under the rules. Why decide this now?

MR. SHIFF: Your Honor --

THE COURT: As you said, I mean, people are sending in their ballots. A lot of people don't send their ballot till the last day.

MR. SHIFF: No question.

THE COURT: And your twenty-two million dollar may go up to forty million. You may only have a two million dollar problem, and that -- maybe that's with Toyota, and you know, you may rather have a claim against Toyota than against Delphi.

MR. SHIFF: Your Honor, we would like -- what we're trying to avoid is having this date and this issue sort of just be a complete bar to our being able --

THE COURT: Well, nothing's a complete bar under the rules. You know? Even a bar date's not a complete bar under

the rules.

MR. SHIFF: Right. And I understand that. And I don't know if excusable neglect would apply to this. That might be --

THE COURT: I don't know. Maybe it would.

MR. SHIFF: -- something someone has to argue.

THE COURT: I don't know.

MR. SHIFF: That would be an interesting -- right. That would be an interesting issue.

THE COURT: Because we don't know yet. No, I'm sorry. I think excusable neglect would apply. But I don't know whether it would be sustainable or not because we don't know the facts.

MR. SHIFF: Right, well ultimately you will not know the facts until you identify which of the --

THE COURT: Right.

MR. SHIFF: -- 200, whatever they are, weren't done "properly".

THE COURT: Or five. Who knows?

MR. SHIFF: Or whatever the number is, yes, Your Honor. That's certainly correct. What I know we're going to hear, or I expect we're going to hear is, well, you know, you sat on your rights. You didn't do anything. You didn't try to fix the situation, and --

THE COURT: But that may be legitimate.

MR. SHIFF: Okay. Well --

THE COURT: Not you guys. But, you know, whoever, Toyota.

MR. SHIFF: Right. One way to resolve that is at least have -- allowing at least for the -- and maybe people don't need permission to do this, and I don't think they do, I mean, transferees can send in ballots and say hey, this is a valid ballot.

THE COURT: But you don't know what it -- but you don't know what --

MR. SHIFF: That's the problem. Right, Your Honor. That's exactly the problem.

MR. BUTLER: Your Honor, at some point, can the debtors be heard, because this is not --

THE COURT: Yeah. I'm sorry. I've probably been going on too long myself. But I'm just trying to figure out what really is being sought here, so.

MR. SHIFF: If it would be helpful, I can -- I can summarize what's being sought or --

THE COURT: Okay.

MR. SHIFF: -- perhaps the Court --

THE COURT: All right.

MR. SHIFF: -- does know.

THE COURT: Okay.

MR. SHIFF: All right. Very briefly. We would

like -- we seek to have the deadline that is tomorrow moved to January 16th. We seek to have the authority, at least protectively, to file, to the extent we can, on behalf of the transferors. We seek to have the debtors work with us over the next -- through that period, whatever it may be, January 16th, work with us to get the best information possible --

THE COURT: But what is that -- what does that mean?

MR. SHIFF: -- that is to try -- reconciliation which we believe they have as to the scheduled claim or the proof of claim as it may be, and the -- essentially the cure -- the cure amount/purchase order number. And I think finally, and this one may be an issue to deal with another time, or it may tie to the other issue, is under the order, it gives the debtors the authority, but does not direct them, to make payments to -- directly to the transferors. And we would ask either that they be directed, with respect to our group, not all to make them to us, or in the event there is at least a dispute as to who should get the payment --

THE COURT: Wait --

MR. SHIFF: -- provide for an escrow --

THE COURT: -- I'm sorry. Directly to transferor?

MR. SHIFF: I'm sorry?

THE COURT: You mean transferee?

MR. SHIFF: Under the order -- maybe I misspoke at the end. The order gives them the authority but not the

direction to pay the transferor.

THE COURT: Oh. But you want it to pay the transferee?

MR. SHIFF: We would like them to pay the transferee. And if there is a dispute or a problem, we would understand, certainly, the money going into what's called an escrow, rather than us having to chase around the globe for that payment.

THE COURT: But, on that point --

MR. SHIFF: And in certain instances, If I -- I'm sorry, Your Honor. I just --

THE COURT: -- no, you go ahead.

MR. SHIFF: Last one. I'm sorry, Your Honor. In certain instances, although we've been focusing on stock -- on cash, some of the other items that might get distributed here may require quick action from people, be it stock or right. And we're concerned, just as the experience we've had here trying to track down these forms, if we have to try to track down stock or rights in a limited time frame, we may very well be frustrated again. And we would think, if there's any dis -- we think it should come to us --

THE COURT: Well, but, what -- on what authority would you have the debtor pay the -- pay your clients in respect to cure claims as opposed to --

MR. SHIFF: We believe it's under 3001(e). We believe it's our claim. They've assigned us the rights. It's

been duly filed. And we think it's simply just like a proof of claim -- just like we got the ballot for the same claim to make those elections, it would be the same exact issue here. And those distributions are coming to us. There's just no difference. And I know there's a citation to a, whether it's a law review article or a newspaper article in the papers that talk about rejection damages claims being different than cure claims. But what we're talking about here, at least for the most part are -- is that very amount, is that prepetition amount that has to be cured and that we have assignments on.

THE COURT: Well now, this was brought on, on one day's notice by order to show cause --

MR. SHIFF: Yes, Your Honor.

THE COURT: -- but none of your contract parties have effectively had notice of this.

MR. SHIFF: That's correct. Other than we've -- the ones we've been speaking to, reach out to, but yes.

THE COURT: So I don't see how I can grant that type of relief without them having notice of this.

MR. SHIFF: That's fine, Your Honor. I think there's time on that last point to deal with it. That was one of the reasons we had suggested in our papers, and as -- you're not supposed to propose compromises in the papers. One of the reasons we even had the notion of having at least an escrow mechanism so we put there, as to that last prong, certainly we

can, if we need to, expand the relief. We would also hope or expect that if we got just almost letters from those people directing the debtors to pay us, maybe it gets obviated on those?

THE COURT: I guess I'm still -- I still don't understand. If you don't know what the cure amounts are, and the whole premise of this is that you don't, how can you -- how can you file cure amounts on behalf of transferees and have the debtor escrow them?

MR. SHIFF: Your Honor, we can do two things that are relevant. One, more time, maybe we do get the right number. Two, there is still a cash versus stock election that is relevant to us and --

THE COURT: No, I understand. That's a separate point.

MR. SHIFF: -- okay. As to that piece, certainly we don't need to have the number. We can take a quick look at the number and know what we want to elect. I don't want to be prejudiced --

THE COURT: Well, wait --

MR. SHIFF: -- irrevocably if someone else made the wrong --

THE COURT: -- I'm sorry. I've been -- maybe I've been incorrectly assuming -- I'm assuming that your clients would elect one way across the board for each client. I mean,

are you telling me that --

MR. SHIFF: Oh, you mean in terms of the election itself --

THE COURT: Yeah.

MR. SHIFF: -- as opposed to the amount? Yeah, no, I think that's safe to assume.

THE COURT: Okay. All right. Okay.

MR. SHIFF: Thank you, Your Honor.

THE COURT: I want to hear from Mr. Butler, please.

MR. BUTLER: Your Honor, the first point, is I don't understand why we're going through this hearing. It wasn't Mr. Shiff who stood before the Court representing these creditors, it was Mr. Rosner and Mr. Zinman at the disclosure statement hearing. But they settled.

THE COURT: Say -- well, I'm sure they talked with him.

MR. SHIFF: Same firm. Same clients.

THE COURT: I expect they talked with him.

MR. BUTLER: And the order that they agreed to that was signed by Your Honor at the disclosure statement hearing, the solicitation procedures order, says at paragraph 44, and I quote, the generic notices spoke to "is the only notice the debtor shall be required to provide to these claims purchasers with respect to the cure, and these claims purchasers shall have no rights or recourse against the debtors with respect to

the cure." The mechanics -- the same order, at paragraph -- the immediately -- and that's at paragraph 44 of that order; at paragraph 43 of the order, there is very specific language about the fact that these cure notices will go out to the counter parties to the supply contracts and the payments will go to them. And why is that? Be cause this is cure, and Section 365 and not a claim. And there is no authority. And Mr. Shiff and Mr. Zinman didn't quote any authority to suggest that they -- that this is -- cure constitutes claim for purposes of voting, for purposes of claims reconciliation or anything else. Cure is tied inextricably to the underlying contract.

They concede -- they don't have the contract. 365 says the debtors deal with the contract vendor, the other party to the contract, the counter party, if we seek to assume the contract. And we have to cure the defaults under that contract with the vendor. Not with some third party. There's no case law I'm aware of, there's certainly nothing in the statute that says that a claims trader can acquire the right to cure and can, in my view, interfere, perhaps even tortiously interfere, with the contractual relationship between the debtor and its contract vendees, particularly in this case, where these supply agreements, all right, do not permit assignment. And we put in our papers, we concede that the Michigan Uniform Commercial Code does allow accounts but not under other rights, to be

assigned, all right? But what was assigned -- whatever was assigned, and whatever those agreements were -- that those transfer agreements are, not one of which is in evidence, and not one of which we've seen; whatever those transfer agreements are, whatever rights they extend to some 1,187 claims that are out there, dealing with, you know, many hundreds of contracts if not thousands of contracts and purchase orders, are whatever they are between the individual claims purchaser and the contract vendee. That is not -- we don't care what those arrangements are. It's none of our business, and if they, between them have allocated rights that ultimate -- so long as it, by the way, doesn't breach our agreement and so long as it's not -- you know, it's enforceable. If it's enforceable, they can deal with that in a State Court process outside of the Bankruptcy Court.

But this isn't Rule 3001 territory. This is Section 365 territory. All right? And this issue has been dealt with before in this Court in this case, and there's a final order that determines it. And these parties were at the hearing, objected, and settled on the record. So I don't understand how we're getting into the merits of what they'd like to have. I understand, and I'm frankly, as a personal matter, sympathetic to some of the issues they may be having now. Just as the ABI Journal article talked about, that we attached as Exhibit E to our response, claims traders who buy executory contracts that

may be assumed, all right, may not be purchasing what they think they're purchasing. The point's been made. Exhibit E lays it out specifically. The commentator -- the commentators, we quoted the paragraphs in our reply here. The paragraph -- the commentators have the warning. They said look, a cure -- "A cure is not a payment on account of rejection damages claim. It is a payment to a contract counter party to facilitate the debtor's ongoing performance under the contract. Under those circumstances, there is no rejection damages claim and the debtor can successfully move to disallow any such claim. Thus absent some arrangement between the three parties, the debtor will pay the cure amount to the contract counter party, not to the purchaser of the rejection damages claim." And it goes on.

There is -- and when you look at the case law, you know, look at 1126. Someone whose -- a contract's going to be assumed can't vote. I mean, they have -- whatever they bought out there, and he made the comment, Mr. Shiff made the comment, that he's got a sophisticated -- these are sophisticated purchasers, all right. And these sophisticated purchasers bought trade claims, but they didn't -- they didn't focus on the fact that they were buying trade claims of ongoing supply agreements which were subject to terms and conditions with Delphi, which couldn't be abrogated. And therefore they had to use the exception provision under the Michigan Uniform Commercial Code, which controls, which says all you got is an

account. All right? That doesn't answer the question under the bankruptcy code. Section 365 controls this issue.

And it's not like we haven't -- this is not a new issue in this case. This issue was contemplated. This relief relating to how we would deal with cures was filed in the original solicitation procedures motion back on September 6th. Lots of parties have looked at these papers over the last three or four months. And at a contested disclosure statement hearing this order and this relief was granted. And we went the extra mile. We added a provision, and I acknowledge, the notice to claims purchasers provision, we added. After consultations with the committees and talking about other possibilities, we added a claim purchasers provision in our omnibus reply that we filed on December 5th, which found its way into the order; which said, to the extent we knew there was a claims purchaser on the docket, we sent them, essentially, a warning flag that said -- it's a generic notice, Mr. Shiff was right, it was a warning flag saying, better check out what your relationships are with your purchasers -- or with your assignors. Better figure out whether they're executory contracts covered by cure. And you ought to go protect yourself if you have those rights. Because we don't know whether you do.

Nothing required us to do that, but in order to try to protect the people here as best we could as the debtors, we

sent that notice out. And that was under paragraph 44 and Exhibit P of the -- of the solicitation procedure order. And those are the notices that caused them to focus on this issue. Maybe they hadn't focused on it before. But as Your Honor pointed out, and as we said in paragraph 18 of our reply, they could have had either, at the disclosure statement procedures hearing when we had -- you know back on December 6th or December 7th or December 8th, they could have sent a notice out if they had the rights under their contracts, which I don't know that they do, they could have sent a notice out there to their entire acquisition file saying these are our rights, this is what we instruct you to do. When you get these notices we expect you to send them to us. Whatever they choose to do. But that's between them and the counter party to the contract.

And I'm not saying -- standing here, Your Honor, telling you that we even have agreed to that, because it's not clear to me that the rights on a nonassignable contract, which is nonassignable pursuant to its terms. If they didn't look at the contracts that they purchased accounts from, you know, I can't help that. But the right to cure is inherently intrinsic to the contract and to the terms of the contract under 365.

So we had discussions with -- over the last week with the claims purchasers here. But we're not prepared to essentially rewrite a solicitation procedures order which is unambiguous and to which they agreed. And we'd ask the Court

to enforce the order and the settlement against the settling party. And so, I mean, I just -- I really, truly, don't understand why we're here other than they have recognized that they have some risk associated with having acquired contracts that may in fact -- accounts related to contracts that may be assumed as opposed to simply having the payments made. But I don't believe there's going to be any payments made on it. To the extent we're -- assuming a contract, Your Honor, I believe is a matter of law. We will not be making any payments on account of the claims that have been reconciled. If a claim has been reconciled and there's a contract cure payment made, that claim will get no payment on it. That's the law. That's what the code says.

THE COURT: What about the point Mr. Shiff made that they've contacted some of these contract counter parties who say, well we don't have the cure form?

MR. BUTLER: That could raise -- I mean, Your Honor, we're presuming at confirmation we'll be able to prove that we've properly served people. Assuming we've properly served people, and a contract party either throws away the form or doesn't throw away the form, you know, all that does is create --

THE COURT: Aren't they able to get a -- I mean, within the deadline, aren't they able to get a copy and send that in?

MR. BUTLER: They can contact us back and we can issue a new ballot to them. But these bal -- some of the ballots, Your Honor, are like currency. And you're right, the balance are -- the ballots are issued uniquely to a particular place. We weren't going to send out 300 ballots for the same cure notice to somebody. And so we -- and, you know, those procedures were all laid out in the order they're bound to. We didn't dream this up, Your Honor. It's in the solicitation procedures order. The forms -- the form he's speaking about, is the form -- is paragraph 45 and Form Q, Attachment Q to the solicitation procedures order.

THE COURT: So if, for some reason, the debtor is dilatory in sending out a replacement ballot, that would presumably be a basis to extend the deadline or relief

MR. BUTLER: Yes. If we got a request. I mean, I'm not aware of -- maybe there have been requests flowing into KCC for replacement ballots from the proper party. If Mr. Shiff's clients are calling and asking for ballots, they're not entitled to them.

THE COURT: Okay.

MR. BUTLER: That's not who's entitled to them. The contract -- the contract counter party is entitled to these ballots. They're entitled to make the cure decisions. And I don't know that Mr. Shiff's clients have any rights to interfere with that. And ultimately, if they press those

rights, it's not clear to me that they're not tortiously interfering with the estate.

THE COURT: Well, if they're not -- the other alternative he raised would be to get out of the process of getting between the debtor and the contract parties, but simply to make a provisional election themselves. What -- where would the harm be in that?

MR. BUTLER: Under what right do they have to do that? They don't own the -- they're not the contract -- they admitted -- Your Honor asked the question, they admitted, they are not the contract -- they are not the contract counter party. They have no rights under 365. All right? And the solicitation procedures order, which binds them, I keep coming back to this order, it's like we're -- we're like rewriting history as if we didn't have a contested disclosure statement hearing. We had a contested disclosure statement hearing. They objected. All right? We spent hours negotiating a settlement. It was put on the record and approved by Your Honor, and then Your Honor entered an order. Now they don't like what the order says.

I don't know how we have that conversation, frankly. I mean, I don't know how we get beyond that point. But assuming we get beyond that point, they have made no showing here at this hearing and nothing in their papers suggest, that they have any cognizable rights under Section 365 of the

bankruptcy code. It is the only section that deals with the assumption of a contract and cure. And I have not been able to find any case law -- we've looked, maybe they haven't -- we've looked. I haven't been able to find anything to suggest that there are rights that purchasers have of those claims. And in fact, what we have been able to find and look at, is the case law we put in here, which points out -- the 1126 analogy, which basically says, you assume the contract, there's no prepetition claim to -- it's extinguished. There's no prepetition claim to vote under 1126. And we pointed out the journal article that we found, which we thought -- which is exactly on point, which raises these very warnings to claims purchasers, saying don't buy executory contract accounts if you don't know how you're going to administer them. And you don't provide for it.

THE COURT: Are some of the contracts that the debtor's proposing to assume contracts where the debtors are proposing modifications or additional ways to provide adequate assurance for future performance or anything like that?

MR. SHIFF: I don't think we're doing much, Your Honor, in the way of modifications at this point. We've been negoti -- those have been negotiated. The GSM organization has been sitting down with all -- I mean, that's the other irony of this -- for months. There's been at least five months of extensive negotiations about these contracts between the Delphi and the contract vendors.

THE COURT: Well I guess --

MR. SHIFF: -- counter parties.

THE COURT: -- I guess where I'm going with that, and maybe this is a better question for Mr. Shiff, is, under 365 the debtor has to meet three requirements: cure and adequate assurance of future performance. And if you're changing the contract, anyway, you obviously need consent. And it's my experience that contract parties often negotiates various parts of those tests to come up with an overall agreement. Is that -- are you saying that some of that has already happened?

MR. BUTLER: Yes. There's been -- there has been extensive negotiations about the terms on which parties will continue -- agree to negotiate going forward, about, you know, the supply chains been -- had extensive discussions with the company. And very positive constructive discussions. There's a very good relationship between the supply base.

THE COURT: So if you got a surprising cure claim back, for example, your -- the people who have been negotiating the contracts may go to the supplier and say well, wait a minute. You know the premise of our negotiations going forward, we always thought the claim was X, and now you're saying it's 200,000 more. Maybe we need to think about some other aspect of this contract?

MR. BUTLER: Particularly seeing as all these contracts or virtually all of them can be terminated by Delphi

for convenience. That's correct, Your Honor.

THE COURT: Okay.

MR. BUTLER: And they're not assignable. I mean, remember, these are supply agreements. And I do believe that one of the reasons that we're here today is that the claims purchasers, at some point in the last couple of weeks, have come to understand that they bought accounts from nonassignable supply agreements, that in fact, are going to be assumed by the debtors. And, you know, and that may not be what they thought they had. I don't know. I don't know what any of their contracts are between them and their assignors. Certainly it is Delphi's position that to the extent that those things do anything other than what Michigan law permits, they're void and not enforceable. And, you know, and we take the supply agreements very seriously. They're the counter -- they're one of the absolute cornerstones of the company's operations. And we go to great lengths to, as everybody in the auto sector, to defend our contracts and the relationships with them and the nonassignability of them and similar issues.

So I mean, and Your Honor, there's a lot we could talk about here, but what I'm -- I guess I've been trying to understand is how we got initially beyond the settlement, and even if there wasn't a settlement, beyond the participation of these movants in the solicitation procedures hearing, where this order was entered and is now a final order of the Court.

And it's clear and unambiguous on its face. I just don't know how we go any -- go beyond that, nor do I think we should. I mean, these are issues that, in a very complex case, we have devoted hundreds of hours negotiating and thinking about and talking to people about and trying to sort through. And there's nothing here from the debtor's perspective, there's nothing nefarious here. This has been perfectly transparent. These cure procedures have been out there publicly since September 6th, for Pete's sakes. There's nothing nefarious in any of this from the debtor's perspective. But we do have to have an ability to be able to sort through these things. And to the extent that there's claims purchasers that are going to have issues with their assignors, that is not something that the debtors want to be involved in, nor do we think this Court ought to be involved in. And that's, I think, a State Court issue between those parties.

THE COURT: Okay. Thank you. Yes.

MR. SHIFF: Your Honor, I'll try to be brief. We understand and are not disputing the existence of this order and that it governs. What we're before the Court is asking for what we consider, and people can characterize it differently, I won't call it limited relief, but relief in certain ways, from that order, which we think the Court has the authority to do under a simple standard.

THE COURT: I understand. But --

MR. SHIFF: Extending the deadline --

THE COURT: -- and one of the reasons I granted the order to show cause is because it wasn't clear to me whether this would be really a big deal or not. But it does seem to me that what you're proposing would get your clients in the middle of the dealings between the debtor and its contract parties. And that does seem to me to be a big deal. Particularly where there are ongoing supply relationships. I don't know how you get over that. I mean if -- you made the case in your papers that you're the real party in interest because the prepetition amount owed was assigned to you. And generally, Courts want to hear from the real party in interest. But I'm pretty persuaded here that that's really not the case because this is an assumption situation where the real party in interest really has the ability, if they want to, to negotiate with the debtor as guided by 365, the hoops to go through there, and the terms of the underlying contract, whether it's assignable or not, whether it's terminable at will, all those things. And that may lead suppliers to reach certain agreements.

There may be economic consequences of their doing that in terms of what they have assigned to you. But I have no idea what those might be because I haven't seen any of the assignments, and at the end of the day, that's between you and them. It seems.

MR. SHIFF: Well, Your Honor, to take this into

pieces. I think there are certain aspects of what you just said that may impact on that relationship, and we'll come back to that. And there are certain aspects that don't. A couple of days and replacement ballots sent to the transferors, certainly doesn't impact upon any relationship that might exist between -- you know, with respect to the underlying contract, or you know, the special negotiations that might be taking place. So I think there's a threshold --

THE COURT: But isn't up for them to ask for that?

MR. SHIFF: Sorry, Your Honor?

THE COURT: Isn't it up to them to ask for that?

MR. SHIFF: Yes. And in most of these instances what we've done, and what we have done, I should say, is we've contacted those people, we gave them a number at KCC to call, and they have not gotten the form back. It's just -- it's -- I mean there are numerous -- it's happened numerous times. And again, not suggesting anyone instructed them --

THE COURT: But it's not at the deadline -- there's no deadline yet. They're not even in breach of any contract they may have with you under that at this point. Are they?

MR. SHIFF: If they don't get the ballots in -- I'm sorry.

THE COURT: By today. I mean, there's no deadline yet.

MR. SHIFF: No, no. It's -- the deadline's

effectively today.

THE COURT: I guess, I don't see why we don't wait to see what they do.

MR. SHIFF: Because I think we can possibly avoid a lot of what might be the problems, if we give them -- coming back to the issue of whether we execute or not in the contract relationship. On the more base issues. If we give them that time and instruct KCC to get them those ballots to avoid --

THE COURT: But they're not asking for that time. They're not asking for it.

MR. SHIFF: Well, they've asked KCC for the ballots. We know the debtors have --

MR. BUTLER: How do we know -- I mean you're making assertions --

THE COURT: If they have asked KCC for a ballot --

MR. BUTLER: -- confirmation on that.

MR. SHIFF: I'm sorry, Your Honor.

THE COURT: -- if they've asked KCC for the ballots and KCC doesn't get them a ballot, I'll give them time. But there's no records that that's happened.

MR. SHIFF: It's not before the Court. Certainly not, no. We will have to --

THE COURT: I mean, that's -- Mr. Butler acknowledges, that's -- if that actually happens, that's remediable.

MR. SHIFF: Your Honor, we think, as to the issues with respect to the contracts, I mean, there's been a lot of assertions here that 365 does not impact the claim and doesn't involve reconciling claims. And then there's talk about, well if you have a cure, then it reduces the claim. I mean, it's -- I mean, I don't know what 365 is if it's not -- I mean 365 has a few different pieces, which the Court has walked through, the adequate assurance, section certainly. One of them is curing the default, which is paying the prepetition claim. And that is --

THE COURT: But it's between --

MR. SHIFF: -- what our client has --

THE COURT: -- but as between the debtor and the contract party are concerned. And this often happens. Those hoops, and there are three main ones, the debtor can't assume anything but the contract; it has to cure; and it has to provide accurate assurance. Those things are negotiated as a package very often. And to pull one out and say that the negotiation has to occur with someone else, where there's nothing in the record to suggest that the contract party has, you know, assigned the contract or the right to do that to anyone else, I think is -- that's a big deal. I think that's more than what I -- when I saw your order to show cause yesterday, I thought the relief you were seeking was all about.

MR. SHIFF: Right, no, Your Honor. As to that point,

and I appreciate what the Court is saying, and I don't want to belabor it. What we're seeking as to that is to submit ballots, forms, on behalf of the transferee, if they can, and then it will get dealt with. It may be that they already agreed to some package that reduced the claim and we have to go sue somewhere else. And that's fine. I mean we'll have to deal with that. But we don't want anything to preclude us from doing that. Quite frankly, I think if you read paragraph 43, although it does talk about providing the notices to the counter parties, the rest of the section talks about parties wishing to object, parties -- I mean, it's a different word, and what we're simply looking for is something that doesn't preclude us from doing that. And then there may be fights before the Court as to how much or who gets it, and that's fine.

THE COURT: Well, okay.

MR. SHIFF: And I think the similar point on the payment of the claim, where we would seek to at least at the very least, not have that go out the door to what we allege is the wrong party, and allow us, if we can't get it resolved, to bring it on before the Court. But I think -- and I think the last point, just to finish it up, is -- and I know there's no proof at this point that people haven't gotten ballots, I certainly would think it would make some sense, and don't see any prejudice, combined potentially with a few days, to let

people use copies if they can't get the originals.

THE COURT: Well, but they can call the -- they can call the ballot agent.

MR. SHIFF: And if they get it then they can get them in.

THE COURT: Well, but, you know, if they call the ballot agent five minutes before the ballot's due, I think there's a problem. But if they call --

MR. SHIFF: Certainly.

THE COURT: -- you know, in the morning, then the ballot agent is probably going to get it to them.

MR. SHIFF: We probably are five minutes before, but -- no, they have been calling, Your Honor. But I know it's not in the record, and that's something we'll have to develop, I guess, further

THE COURT: All right. I think that the relief you're seeking here is relief that, as Mr. Butler says, is contrary to the order. And that order was on, I believe, ample notice. It also, and as importantly, is relief that I think is not merely a procedural correction of an error or relief that would have no material effect on the debtors or other parties in interest. The main reason for that conclusion is that I think it depends -- granting the relief would depend on me overlooking the primary relationship here, in fact the only relationship here, that the debtor has, which is with its

contract counter party, who are obviously ongoing trade suppliers and vendees who are important to the debtor's ongoing business. And under Section 365, they are the ones who really need to deal with the cure notice, because it's not just a cure notice. It's an assumption notice that lays out and reminds the contract parties -- counter parties, of their rights under Section 365, which are not limited to insisting upon cure.

I believe that your clients, as a very function of the assignment agreement which they entered into, know who these people are and could have, and I believe as you say they have, contacted them and given them what your clients believe are their obligations under your clients' agreements with those people. But those aren't three-party agreements. The debtor is not a party to those agreements. And if they don't do what they're supposed to do under your agreements, you have rights against them. I don't know what those obligations are and what those rights are because they're not in the record. But I believe that, again, as I said earlier, contrary to when I signed this order to show cause, this is not an instance where the debtor is just being difficult about a deadline or a procedure and trying to prevent the real party in interest from having its wishes set forth; but rather would have the debtor change the relationship with its contract parties and get in the middle of your relationship with them. And they're really two separate relationships.

So I don't see a basis, given that fact, for amending the order. I don't think it was a scrivener's error and I don't think it was sort of slipped in overnight. I think you have the ability to contact all of these people and to say make X election if you want to do that. And it's up to them whether they're going to comply or not. And that's why the -- paragraph 45 in the order was in there, in that notice to you all, so you could do those sorts of things. But I don't think the debtor should get in the middle of that potential dispute between you and them, and hold up distributions or create, you know, a fund to fight over, just as I don't believe the debtor, when it hears that a creditor of a creditor has an issue with its creditor, and maybe had a lien against the creditor and is worried about the creditor, that the debtor should get sucked into that fight. I think it's a similar -- it's an analogous situation.

MR. SHIFF: Your Honor, certainly we hear you on your views on that topic.

THE COURT: Well, let me just say again --

MR. SHIFF: I'm sorry.

THE COURT: -- as far as the issue about whether people have had sufficient time to make their elections or not or respond to the cure notice, obviously the notice itself, the order, determined that the deadline was appropriate. However, if they didn't get a copy of the notice or if they made a

request -- a timely request for a new notice or a new form and they don't get it, they have -- they clearly have their rights under the bankruptcy rules to seek relief and an extension of time then. But to do it in advance, I think is really giving you all -- your clients a form of relief that is unwarranted.

MR. SHIFF: Well, Your Honor, I think on your last point, you, I think, addressed where I was going ahead, which was on what I consider, at least, to be the procedural side of this. And I hear the Court. I just may add that one of the potential difficulties here will be that the party who will now need to seek that relief is not the party who ultimately has the economics. And we're setting up a dispute. If we extend it a few days, I think you are setting up the situation where it's much more likely this doesn't become an issue. And I just don't see any harm in a couple of days --

THE COURT: You know, I just don't -- I mean, it seems to me, particularly given that these are all people that the debtor wants to continue in contractual relationships with, that if, you know, Toyota, or Chrysler or some other company calls up the debtor and says, you know, we made a request of the balloting agent and we just didn't get our form in, I don't see that -- you know, and they didn't get it back to us, I don't see the debtor forcing those people to come into Court. I mean, it's just -- that'd be pretty dumb, so. I think that it's -- you know. I also frankly don't see those people

putting down some number that's different from the number that you purchased from. If they do, they're making a calculation that it's -- you know, on a net basis to them, that was stating the damages to your -- that they might owe to your clients, it makes sense to do that. But, you know, that's a pretty -- people have the right to breach contracts, but if they have a contract with your client, it's hard for me to imagine that they'd really -- it's likely that they're going to do that unless it's a pretty unusual situation. So I think you're going to have to just wait and see what happens. Send in more -- you know, send them a letter saying -- I mean, I think you did send them a letter.

MR. SHIFF: We have, Your Honor.

THE COURT: We want you to make a cash election.

MR. SHIFF: We certainly have. And obviously, there's a limit to what we can do now before the deadline.

THE COURT: Okay.

MR. SHIFF: But we hear the Court. If there is a problem people can seek the relief they need to.

THE COURT: Okay.

MR. SHIFF: Thank you.

THE COURT: All right. So I'm going to deny the motion for the reasons stated.

MR. SHIFF: Thank you, Your Honor.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Mr. Butler, do you want to have someone submit an order to that effect.

MR. BUTLER: We will. We will, Your Honor.

THE COURT: Run a copy by Mr. Shiff. Don't settle it, just run it by him.

MR. BUTLER: We will, Your Honor. Thanks.

THE COURT: Okay. Thank you.

MR. BUTLER: That's all we had today.

THE COURT: Okay. All right.

(Proceedings concluded at 4:53 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I Penina Wolicki, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

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